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No. 591

In the Supreme Court of the United States

OCTOBER TERM, 1954

FRED IHLER and ANNE IHLER, his wife,
PETITIONERS

vs.

OLGA ROSEN, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

To: The Honorable Earl Warren, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

OPINION BELOW

The Opinion of the Supreme Court of Wisconsin is reported at 267 Wis. 220 and appears at P. 15 of the Appendix.

JURISDICTION

The judgment of the Supreme Court of Wisconsin was rendered on June 8, 1954. A Motion for

Rehearing was denied by the said Court on October 5, 1954.

On January 3, 1955, the Honorable Justice Tom Clark of this Court granted Petitioners' motion extending the time within which to file a Petition for Writ of Certiorari until February 2, 1955. A further extension of time was granted Petitioners by the said Justice Clark on February 2, 1955 until February 12, 1955.

The statutory provision believed to sustain the jurisdiction of this Court is Section 1257, Title 28, of the United States Code.

QUESTION PRESENTED

The question herein presented is whether Section 2396 of the Revised Statutes of the United States controls the length of a section line where there are no monuments establishing the end of the section line. More particularly, the question is whether a section line established by a United States Survey pursuant to the laws of the United States governs a boundary line dispute between adjoining landowners. The one landowner, Respondent, contends that the survey of the section line by private parties independent of the United States Survey is decisive of the dispute. Petitioners contend the section line established by the United States Survey is final and binding on the parties since it was made pursuant to the laws of the United States.

The question presented is a matter of first impression to this Court.

THE UNITED STATES STATUTE INVOLVED

The Statute of the United States, the validity and applicability of which is involved, is *Section 2396 of the Revised Statutes of the United States*, derived from the Act of February 11, 1805, Chapter 14, Section 2, 2Stats. 313, 43 USC 752.

The Statute provides as follows:

> "BOUNDARIES AND CONTENTS OF PUBLIC LANDS: HOW ASCERTAINED.—
>
> "The boundaries and contents of the several sections, half-sections, and quarter-sections of the public lands shall be ascertained in conformity with the following principles.
>
> "First. All the corners marked in the surveys, returned by the Field Surveying Service, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half and quarter sections, not marked on the surveys, shall be placed as nearly as possible equidistant from the two corners which stand on the same line.
>
> "Second. The boundary lines, actually run and marked in the surveys returned by the Field Surveying Service, shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, *and the length of such lines, as re-*

turned, shall be held and considered as the true length thereof. And the Boundary lines which have not been actually run and marked shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the watercourse, Indian boundary lines, or other external boundary of such fractional township.

"Third. Each section or subdivision of section, the contents whereof have been returned by the Field Surveying Service, shall be held and considered as containing the exact quantity expressed in such return; and the half sections and quarter sections, the contents whereof shall not have been thus returned, shall be held and considered as containing the one-half or the one-fourth part, respectively, of the returned contents of the section of which they may make part." (Emphasis supplied)

STATEMENT OF THE CASE

This action was brought in the Circuit Court of Marinette County, Wisconsin, by Olga Rosen, the Respondent, against Fred Ihler, Anne Ihler, his wife, the Petitioners, and E. Gertrude Briggs, for the purpose of quieting title to certain premises in Marinette County, Wisconsin.

The dispute involves the location of a section line which is the dividing line between the property owned by the Petitioners and the property owned by the Respondent.

The land had been originally surveyed by the United States Government surveyors in 1839 or 1840. The sections had been laid out and the section line had been drawn by the said surveyors.

The boundary between the Petitioners' property and the Respondent's property is the section line dividing Sections 19 and 20. The north corner of these sections was located. There was no monument locating the southern corner of the sections, between which the section line could be drawn.

The lines were extended south from the north corner. The Petitioners' extended the line exactly 1182.72 feet to the high water mark of Green Bay. This is the exact distance called for in the original government survey.

The Respondent extended the line 1300 feet to a fence without reaching the high water mark of Green Bay. The Respondent did not attempt to conform her survey with the length of the section line called for in the original government survey.

The question of the applicability of Section 2396 of the Revised Statutes was decided adversely to Petitioners by the Supreme Court of Wisconsin.

The stage in the proceedings in the Circuit Court of Marinette County, the court of first instance, at

which, and the manner in which the federal question sought to be reviewed was raised, is as follows:

The testimony indicated (Record Page 181) that the section line in question was 1182.72 feet according to the original government survey. The surveyor who testified for the Petitioners in locating the section line followed the government survey, so that the section line would measure exactly 1182.72 feet. There were no monuments of the original surveyor which could be located. The surveyors who testified for the Respondent (Record Pages 91 and 129) made no attempt to extend the section line 1182.72 feet in accordance with the original government survey, but the section line as laid out by them measured approximately 1300 feet.

In the Supreme Court of Wisconsin, the question involving the application of Section 2396 of th Revised Statutes of the United States was raised by the Petitioners in the brief filed with the said Supreme Court.

The manner in which the federal question was passed upon by that Court was by ignoring completely the application of Section 2396 of the Revised Statutes of the United States and adopting the surveys made for the Respondent, though the boundary line of the section determined by Respondent was considerably longer than the boundary line returned in the original government survey.

In order to adopt the survey of the Respondent, the Supreme Court of Wisconsin disregarded Section 2396 of the Revised Statutes by disregarding the length of the section line returned by the government surveyor. Section 2396 specifically provides that the length of the lines returned by the government surveyor *shall be* held and considered as the *true length.*

The decision turned on this point alone. Although the Supreme Court of Wisconsin in its decision did not specifically refer to Section 2396 of the Revised Statutes, the question of its applicability was presented to it by Petitioners and rejected by that court.

Since the survey made for the Petitioners was the only one which established the section line pursuant to the Federal statute involved, being the only survey where the length of the section line was identical with the length of the section line returned by the government surveyor, the decision necessarily involved Section 2396 of the Revised Statutes.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

The Supreme Court of the State of Wisconsin decided the federal question of substance as to the applicability of Section 2396 of the Revised Statutes in favor of the Respondent herein by holding that the survey made on behalf of the Respondent, although not complying with the original govern-

ment survey insofar as the length of the section line was concerned, was correct, thereby refusing to apply the Federal statute in question. The Wisconsin Supreme Court did not dispose of the case on state law grounds. *Herb vs. Pitcairn,* 324 U.S. 117, at page 124; *Williams vs. Kaiser,* 323 U.S. 471, at page 478.

This is a matter of first impression in this Court.

The principal question involved in the action is the location of the section line which constitues the boundary line between the Petitioners' property and the Respondent's property. In determining where the section line actually runs, the Petitioners contend that the footsteps of the original government surveyor should be followed in re-establishing the line. In determining where the line actually runs, Petitioners contend that Section 2396 of the Revised Statutes of the United States (2 Stats. 313, 43 U.S.C. 752) must be applied. The boundary line of the Petitioners' property and that of the Respondent is the section line dividing Sections 19 and 20. The north corner of these sections was located. There was no monument locating the south section line. The Petitioners attempted to follow the government survey which was made in 1839 and drew a line 1182.72 feet south until it reached the high water mark of Green Bay. This measurement is the exact measurement called for in the original government survey of the length of the section line.

The Survey Made by the Petitioner Controls Since it is The One that Complies With the Government Survey Made Pursuant to the Laws of the United States

There is no dispute between the parties that the section line is the boundary line between the parties. There is no dispute that the north corner of said sections was located. There is no dispute that the southern corner of the section was not monumented. Both parties in surveying the land commenced their survey at the common north corner of the section line. The government field notes of the original survey placed the section line as extending only 1182.72 feet and ending at the high bank of Green Bay. The high bank of Green Bay has not materially changed since the survey was made in 1839. In making a resurvey the footsteps of the original surveyor should be followed in reestablishing the line of a survey, and it is immaterial whether the lines actually run are correct. *Galt vs. Willingham,* 11 Fed. (2nd) 757 (CCA-5); *Niles vs. Cedar Point Club,* 175 U.S. 300, 44 L. Ed. 171.

There are no natural or fixed monuments locating the southern end of the section line which can be used in making the survey. Since there are no natural or fixed monuments, it is the settled law that the courses and distances must govern. *Chinoweth vs. Haskell,* 3 Pet. 92, 7 L.Ed. 614; *M'Iver vs. Walker,* 9 Cranch 173, 3 L.Ed 694.

Section 2396 of the Revised Statutes specifically provides that the length of the section lines *shall be* considered as the *true length* thereof. It is, therefore, apparent that where there are no monuments marking the section lines of the original government survey, the United States Statute must be applied, and that the State Court cannot apply the local custom in contravention to a Federal legal rule of survey. That this is the law of surveys was stated by this Court in *McEwer vs. Den,* 24 How. 242, 16 L.Ed 672.

The boundary lines as originally found may not be changed by a re-survey. *Kean vs. Calumet Canal & Improvement Co.,* 190 U.S. 452, 47 L.Ed. 1134.

It is essential in order to assure stability of land titles that the government surveys must be taken as correct and that the state courts in determining disputes as to properties must follow the U.S. Government survey when the U.S. Government survey does in fact determine the boundary between the litigants.

This is not an ordinary case of a dispute between two private litigants as to title to the land, which would be considered merely a local matter and which would be for the state courts alone to determine. There is no question of adverse possession. The Respondent did not allege or make any claim by virtue of any adverse possession. The Referee before whom the hearing was held denied the Re-

spondent permission to amend her claim to include any allegation which would establish her title by adverse possession.

This case does not involve a question as to the description of land as contained in various deeds, which would be a question for the state courts to determine.

The question involved directly herein, and the sole question involved, is the location of the section line as established by the U.S. Government survey and whether the Federal statute was followed in attempting to locate that section line. *McEwer v. Den,* supra.

The surveys as made by the Respondent were not closed. They did not enclose a whole section of land. The section line as drawn by the surveyors for the Respondent ran to the west of the line drawn by the Petitioners. The section line as drawn by the Respondent never reached the high water mark of Green Bay. The section line drawn by the Petitioners was longer than the section line called for by the notes of the original government survey. The section line as drawn by the Petitioners was exactly the same length as the length called for by the notes of the original U.S. Government survey. The survey made by the Petitioners was the only survey that complied with the provisions of Section 2396 of the Revised Statutes. That Section in paragraph Second provides:

> "The boundary lines, actually run and marked in the surveys returned by the Field Surveying Service, shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, *and the length of such lines, as returned, shall be held and considered as the true length thereof.* (Emphasis supplied)

In the instant case, Petitioners are urging that the original U.S. Government survey be upheld as establishing the boundary line in dispute and the "true length thereof". Respondent has attacked the propriety of the boundary line established by the U.S. Government survey. The words of the statute are mandatory. The boundary lines returned by the U.S. Government survey, *"shall be established as the proper boundary lines of the section, * * and the length of such lines, as returned, shall be held and considered as the true length thereof."* Petitioners seek nothing more than compliance with the controlling statute.

The Respondent in making her survey made no claim that her survey conformed to the original government notes as to length of the section line. The line drawn by the Respondent was established by reference to the so-called ancient fence theory which under certain circumstances can be used as fixing the correct boundary of a tract of land. *Wunnicke vs. Dederich,* 160 Wis. 462, 152 N.W. 139 but this rule must give way when a federal statute is involved.

The Respondent also attempted to establish the line by reference to the courses called for in the original government survey. But Respondent admits (Record Page 147) that the original course of the government surveyor were not followed.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers by granting a Writ of Certiorari, reviewing and reversing the decision of the Supreme Court of the State of Wisconsin.

Respectfully submitted,

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APPENDIX

State of Wisconsin
in Supreme Court

And afterwards to-wit on the 5th day of May, A.D. 1954, the same being the 73rd day of said term, the following proceedings were had in said cause in this Court:

MARINETT CIRCUIT COURT

Olga Rosen, respondent

vs.

Fred Ihler and Anne Ihler, His Wife, and E. Gertrude Briggs, appellants

And now at this day came the parties herein, by their attorneys, and this cause having been argued by Howard W. Eslien, Esq., for the said appellants, and by Charles M. Denissen, Esq., for the said respondent, and submitted, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

And afterwards to-wit on the 8th day of June, A.D. 1954, the same being the 81st day of said term, the following proceedings were had in said cause in this Court.

This cause came on to be heard on appeal from the judgment of the Circuit Court of Marinette County and was argued by counsel. On consideration whereof, it is now here ordered and ad-

judged by this Court, that the judgment of the Circuit Court of Marinette County, in this cause, be, and the same is hereby, affirmed.

Thereupon the opinion of the Court by JUSTICE STEINLE was filed in words and figures following, that is to say:

OPINION OF THE SUPREME COURT OF WISCONSIN

No. 292

August Term, 1953

OLGA ROSEN, RESPONDENT

v.

FRED IHLER ET AL., APPELLANTS

APPEAL from a judgment of circuit court for Marinette county, ARNOLD F. MURPHY, Circuit Judge, Presiding. *Affirmed.*

Action to quiet title. Olga Rosen, respondent, holds record title to lots 20, 21, 22 and 23 of the Grimmer Land Company's Unrecorded Plat of Bay View which premises are part of Fractional Section Twenty (20) in Township Thirty (30) North, Range Twenty-four (24) East. The appellants, Fred Ihler and Anne Ihler, his wife, are record title holders of certain premises in Government Lot One (1) of Section Nineteen (19). The section line between sections 19 and 20 is the boundary line of the property of the parties, said line being the west boundary of the Rosen land

and the east boundary of the Ihler land. Olga Rosen brought this action to quiet title in her of a parcel occupied and used by her and by her predecessors continuously, exclusively and openly for more than twenty years and presently claimed by the Ihlers. She claims that the west line of her premises (including the parcel in dispute) is located on the true section line. The Ihlers by answer denied the claimed interests of the respondent of the respondent and counter-claimed for judgment quieting title in them.

The court submitted the matter to a Referee, Allan F. Stranz, who prepared and filed written findings. The appellants objected to the Referee's findings and by motion heard by the court sought an adjudication that a boundary line different than that found by the Referee is the true boundary line. The court confirmed the findings of the referee and determined that the boundary line was located as claimed and established by respondent at the trial; that respondent and her predecessors in title had occupied the disputed parcel continuously, exclusively, actually, uninterruptedly and openly for more than twenty years under claim of the right by title; that appellants have no interest in the disputed parcel and that they be barred from any claim of right or title thereto; that title be confirmed in respondent.

It is from the judgment predicated upon these findings and conclusions that the appeal was taken.

STEINLE, J. The appellants challenge the trial court's determination of the location of the boundary line between the property of the parties. They maintain that the true section line which represents such boundary is located somewhat East from that found by the court. They claim that their survey is the only accurate and complete survey presented and that it correctly establishes the section line in conformity with the original Government survey and the field notes thereof, together with the recollection of disinterested witnesses.

The trial court determined that the section line between sections 19 and 20 is a line which begins at the common corner of Sections 17, 18, 19, and 20 and thence runs South zero degrees and 5 minutes (0° 05′) East.

At the trial both parties presented expert witnesses and others to sustain their respective positions. It appears that the original Government survey of the section line between sections 19 and 20 was made in 1839 or 1840. A copy of the field notes of that survey is in evidence. The notes show the section line to run South from point where survey was commenced. Alva Hillis, former city engineer of Marinette, surveyed the line between sections 19 and 20 in 1893 and on occasions thereafter. His field notes are available. Stakes by Mr. Hillis still stand and respondent claims that

there is remaining evidence of ancient fences referred to by him in his notes.

At the trial, three surveyors were called as expert witnesses by the respondent. Harry Hall, an engineer and surveyor, located the section line along a fence line running two and one-half to three feet from and westerly of two buildings, a garage and barn. He testified that he had talked with Mr. Hillis before making his survey; that he found post holes and wire through old trees as evidence of an old fence; that it is common knowledge that section lines are off one or two degrees and that Government surveys vary because in rare cases is it ever found that the line runs due north and south or due east and west.

Harry Grimmer, construction engineer, contractor and surveyor, also testified on behalf of respondent, and placed the section line west of the buildings. He said that in making his survey he ran across evidence of former surveys; that he attempted to get his line identical with the former survey (that of Hillis) and with the notes of the original Government survey; that his line comes within .9 of a foot from an iron pipe located at the southwest corner of the property and which had been placed there by Mr. Hillis, that he had copies of surveys made by Mr. Hillis in 1893, 1920, and 1940; that he does not know where the section line ends because he lacks information as to where the Government man put the post; that he noted

the differences between the magnetic bearing which was South zero degrees fifty-five minutes (0° 55′) East and the true bearing. He computed the true bearing from two solar observations and the average of the two was 0° 5′ East. He said that he ran bearings on the rest of the township on known corners to ascertain what the surveyors in the original survey meant by South. He stated that he was influenced by the field notes and what is left on the ground as mentioned in the field notes.

Charles Rollman, a consulting engineer who testified for respondent, did not make a survey but had examined various exhibits and had walked on the property. His findings as to the location of the section line are identical with those of Mr. Hall and Mr. Grimmer.

The appellants presented an expert witness, James I. Corbett, an engineer and surveyor, who had made a survey at the request of the Ihlers in 1951. Mr. Corbett testified that he began his survey at the section corner of 17, 18, 19, and 20; that he first followed some stakes put in before, and chained out (from Government notes) 1182 feet looking for the meander position and meander post on the shore of the water. He found that he would have to move more to the East, and did so 38.9 feet. He said that he then ran two or three more lines from the section corner until he intersected the stake and then chained along that line 1182.72 feet and established an iron stake at the high bank;

that he then went east along the section line between 20 and 17 to note meander position east of the section corner and ran another course and ended up with a closed survey; that he obtained information with regard to distances from the Government notes and that his survey corresponds with those notes. He claimed that the method used by the other surveyors to establish a lost corner is not the regular and recognized method. He said that in making his survey, he did not take into account the evidence of the old fence because the distance of such line did not check back against the Government notes. He said that a survey line and the line claimed by the other surveyors, are 23.57 feet apart at the North boundary of the Rosen property and 27.52 feet apart at the South boundary. He said that in ascertaining that the direction was true North he made no allowance for declination; that he made neither a solar nor polar observation; that he did not consult geodetic charts; that he had noticed evidence of a former survey in the area and an old fence line west of the barns; that he did not know what allowance was made for error in 1840. He said that he did not determine the error in adjacent areas in this township. He stated that in making his survey he used the principal of a "double proportionate" method. He declared that in his opinion the difference of result arrived at between Mr. Hall, Mr. Grimmer, and himself in locating the section line was in the method of survey employed.

The testimony of the surveyors clearly indicates that there was no unanimity of opinion between them as to correct survey practice that was to be employed under conditions as here in the ascertainment of the location of the section line. Mr. Corbett looked for lost corners and used the "proportionate method." Mr. Hall and Mr. Grimmer, while considering the notes of the Government survey, allowed specially for variation between the magnetic bearing and the true bearing. Mr. Rollman agreed that the method employed by Hall and Grimmer was in conformity with recognized surveying practice. Mr. Corbett testified that instead of using magnetic variations, he ran the line from points—although the known points were not designated by markers.

In the absence of a showing that the method employed by Mr. Corbett was the only one recognized in surveying practice and that his was the only result possible it was clearly within the province of the court to determine the weight and credibility of the testimony of those witnesses.

Competent evidence was adduced by respondent that the fence line was by common understanding the boundary line. Several witnesses testified that the fence had existed for more than forty years. Mr. Hillis' survey determined that the section line corresponded with the fence line as did also the surveys of those who testified for respondent. There was competent evidence indicating that the

fence was back of the buildings (west thereof) as early as 1910. A witness, Gertrude Briggs, a predecessor in title to appellants, testified that she knew the property since 1916 and purchased it in 1938. She said that she thought that she owned the fence which was west of the buildings and that when she bought the property she did not think she was buying buildings. She stated that when she sold the property to Ihlers she did not purport to sell the garage and barn in question to him. There is testimony indicating that the respondent and her predecessors in title have used and occupied the land in question for more than forty years.

In our opinion this situation is controlled by the rule in *Wollman v. Ruehle* (1898), 100 Wis. 31, 75 N.W. 425.

> "Long acquiescence in the line so established with undisputed possession for such a long period of time, raises a strong presumption that the line so recognized is the true line, and is not overcome by the mere fact that a survey, made long after government monuments have been obliterated or lost, reveals another line."

The trial court's finding with reference to the use of the disputed premises by respondent and her predecessors continuously, exclusively and openly for more than twenty years in good faith and under claim of right in title is supported by the evidence. The court's finding with regards to

the location of the boundary line between the land owned by the respective parties is supported by a competent evidence. The weight that shall be given to relevant and competent evidence is for the trier of fact. The question of the credibility of the witnesses was for the trial court in this case. We cannot disturb these findings.

By the Court.—Judgment affirmed.

MAR 1 1955
WILLEY, Clerk

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Supreme Court of the United State

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FRED IHLER and ANNE IHLER, his wife, *Petitioners*,

vs.

OLGA ROSEN, *Respondent*.

On Petition for a Writ of Certiorari to the Supreme Court of Wisconsin

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BRIEF FOR THE RESPONDENT IN OPPOSIT

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On Petition for a Writ of Certiorari to the Supreme Court of Wisconsin

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BRIEF FOR THE RESPONDENT IN OPPOSITION

I

OBJECTION TO GRANTING WRIT

The issue involved in the action does not form the basis for jurisdiction and consideration by this Court.

II

STATEMENT OF THE CASE

The action sought to be reviewed is an action to Quiet Title to the following described property, to-wit:

> Commencing at the Northwest Corner of Section 20, Township 30 North, Range 24 East; thence South 0° 5′ East along the West line of Section 20, a distance

of Seven Hundred Fourteen (714) feet to the point of beginning; thence continuing South 0° 5′ East along the West line of said Section 20, a distance of One Hundred Twenty (120) feet; thence North 88° 41′ East parallel to the North line of said Section 20 to the ordinary high water line of Green Bay; thence Northerly along said high water line to a point 714 feet distant from the North line of said Section 20; thence South 88° 41′ West parallel to said North line of said Section 20 back to the point of beginning, Marinette County and State of Wisconsin.

That part of the above described property commencing with the point of beginning and "continuing South 0° 5′ East along the West line of Section 20 a distance of 120 feet" is the line of dispute.

The above line extends 120 feet in a general Southerly and Northerly direction between the extension of the Northerly line of Lot 20 of Grimmer Land Company's Unrecorded Plat of Bayview, and the extension of the Southerly line of Lot 23 of the above mentioned plat. The respondent is the owner of the above mentioned lots and claims ownership and possession to the property East of the above line.

The respondent and her predecessors in title have used and occupied the premises described above since 1912 in much the same manner as it is used and occupied at the present time.

The Westerly boundary of the property, used and occupied by the respondent, was enclosed by a fence; evidences of location thereof remained at the time of the trial. The fence line is located upon the above described line extending from the point of beginning "South 0° 5′ East a distance of 120 feet."

The referee to whom the matter was referred, the lower court, and the Supreme Court of the State of Wisconsin, all found that by a preponderance of evidence that the respondent and her predecessors in title did continuously, exclusively, actually, uninterruptedly and openly, occupy

the premises for more than twenty years in good faith and under claim of right in title. Judgment was entered accordingly.

III

ARGUMENT

1. No Federal Question Is Raised

The question before the Court is whether or not the respondent, by competent evidence, established by adverse possession her title to the property set out in the complaint. This is a matter of fact to be decided by the lower courts. The United States Supreme Court is not a court of general review of fact but is confined to the review of questions of Federal Law. *Waters-Pierce Oil Company* vs. *Texas,* 212 U.S. 86, 53 L. Ed. 417.

> "Nor does this court sit to review the findings of fact made in the state court, but accepts the findings of the court of the state upon matters of fact as conclusive, and is confined to a review of questions of Federal law within the jurisdiction conferred upon this court."

No question of Federal law is involved.

Furthermore, no federal question was raised in the lower court and no federal question was passed upon and accordingly is not properly presentable here. *Miller* vs. *Texas,* 153 U.S. 535, 38 L. Ed. 812.

2. The Disposition of a Federal Question Is Not Necessary to the Determination of the Question in Issue

Assuming that the proper method of making a survey is a federal question (which we deny) the petition must be denied inasmuch as a disposition of the question of a proper survey was not necessary to the determination of the action.

The result of a survey is only but one item of evidence in the matter of establishing title by adverse possession.

The Supreme Court of the State of Wisconsin has repeatedly held:

> "Long acquiescence in the line so established, with undisputed possession for such a long period of time, raises a strong presumption that the line so recognized is the true line, and is not overcome by the mere fact that a survey, made long after government monuments have been obliterated or lost, reveals another line." *Wollman* vs. *Ruehle,* 100 Wis. 31, 34, 75 N.W. 425.

Assuming that the section line is located as claimed by appellants, the Court found that the respondent continuously, exclusively and openly for more than twenty years in good faith and under claim of right of title, had been in possession of and occupied the premises described in the Complaint. Said premises being bounded by an ancient fence located upon a line 120 feet in length and running from an undisputed starting point South 0° 5′ East. Adverse possession ran to the fence; the fence was located on a line running South 0° 5′ East, whether this line was a section line is immaterial.

There is sufficient evidence, exclusive of the surveyor's testimony as to the location of the section line, for quieting title in the respondent and establishing her title to the property described in the complaint.

This Court has heretofore held in *W. O. Rogers, Jr. et al.* vs. *Joseph T. Jones, et al.,* 214 U.S. 196, 53 L. Ed. 965-969:

> "The result is, therefore, that this writ of error comes within the rule that where the disposition of a Federal question was not necessary to the determination of the cause and the judgment is based on a distinct ground or grounds broad enough to sustain it, over which the Court has no jurisdiction, the writ of error cannot be maintained."

IV

CONCLUSION

The Petition for Writ of Certiorari to the Supreme Court of Wisconsin should be denied inasmuch as the question involved is not a proper basis upon which this Court may take jurisdiction.

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